

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

**THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE K.M.JOSEPH**

FRIDAY, THE 13TH OCTOBER 2006 / 21ST ASWINA 1928

ST.Rev..No. 292 of 2006

TA.53/2004 of S.T.A.TRIBUNAL,ADDL.BENCH,KZD.

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REVISION PETITIONER/RESPONDENT/ASSESSEE.

**K.HARIDAS, CRESENT PLY, KUTTIKKOLE,
TAQLIPARAMBU, KANNUR DISTRICT, REPRESENTED
BY POWER OF ATTORNEY HOLDER U.M.P.ABDUL NAZAR,
NEAR POST OFFICE, PAPPINISSERI, KANNUR DISTRICT.**

BY ADV. SRLS.VINODKUMAR

RESPONDENT/APPELLANT/REVENUE:

**STATE OF KERALA, REPRESENTED BY THE
CHIEF SECRETARY TO GOVERNMENT,
SECRETARIAT, THIRUVANANTHAPURAM.**

BY GOVERNMENT PLEADER (SHRI GEORGEKUTTY MATHEW)

**THIS SALES TAX REVISION HAVING COME UP FOR ADMISSION
ON 13/10/2006, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

**C. N. RAMACHANDRAN NAIR &
K. M. JOSEPH, JJ.**

S. T. REV. NO. 292 OF 2006

Dated this the 13th day of October, 2006

JUDGMENT

C. N. Ramachandran Nair, J.

Question raised is whether the Sales Tax Appellate Tribunal was justified in declining exemption to the petitioner from tax payable under Section 5A of the KGST Act on purchase of rubber wood for use in manufacture of veneers. The benefit of exemption was claimed under Notification SRO No.403/94 dated 30.3.1994. The Notification produced before us shows that manufacturers of matches, packing cases, plywood, splints, tea chests, wooden crates, wooden cable drums or veneers, are granted exemption from payment of tax under Section 5A on purchase turnover of soft wood for manufacturing the items referred above. Petitioner accounted purchase of soft wood only at Rs.85,100/=. Therefore, the Assessing Officer treated that the balance purchase accounted

from unregistered dealers is at Rs.9,88,435/=. Therefore, the Assessing Officer presumed that the balance unaccounted purchases from unregistered dealers represent purchase of rubber wood. Accordingly, he assessed the turnover under Section 5A of the KGST Act. The Officer, however, held that exemption under the Notification is not available for purchase of rubber wood. However, he has not recorded any finding that rubber wood is not soft wood. Even though the appellate authority allowed the appeal, the tribunal reversed the same against which this Revision is filed in this Court.

2. We find from the tribunal's order that exemption was declined because under another Notification separate exemption is granted for rubber wood from purchase tax under Notification SRO No. 278/04. The tribunal based on this Notification assumed that there was no exemption for rubber wood prior to the said Notification. We are unable to accept this reasoning of the tribunal because the Notification relied on by petitioner provides for exemption on soft wood used for manufacture of

veneer. Therefore, eligibility for exemption to the petitioner will depend on whether rubber wood is soft wood or hard wood. Learned Government Pleader relied on the decision of this Court in Tropical Plantations Limited v. State of Kerala ((2001) 9 KTR 68) and contended that in view of the finding of this Court in the said Judgment, rubber wood is timber for purpose of levy of tax. The contention of petitioner that it is soft wood cannot be accepted. Even though this Court has held that rubber wood is timber for the purpose of levy of tax under the KGST Act, there was no occasion for this Court to consider whether rubber wood is soft wood or hard wood. The distinction drawn by the Notification is between soft wood and other goods including hard wood. Wood with centre core, like teak, jack wood etc. are generally known as hard wood and wood which does not have the centre core are generally known as soft wood. Of course, certain varieties of soft wood may be fit for use as building material or for making furniture. However, there is a category of wood known in the market as soft wood and only when need

arises, there is necessity to consider whether the wood involved is soft wood or hard wood. The first appellate authority, in this case, relied on the Certificate issued by the Forest Officer to show that rubber wood is soft wood. The tribunal, however, rejected the Certificate as irrelevant for the purpose of sales tax. Those who are familiar with the local conditions and use of rubber wood would never say that it is hard wood. It is common knowledge that rubber wood is a perishable wood with short life and its traditional use was only for use as fire wood. However, technology has developed for converting it into durable timber by chemical process and it is now extensively used for making hard wood. Besides this, the items referred in the Notification, namely matches, packing cases, plywood, splints, tea chests, wooden crates, wooden cable drums or veneers are generally not made with hard wood because no long or durable use is expected of the same. Even though hard wood also can be used for making these items, it is common knowledge that hard wood is never used for making these items as it would not be

economical or viable. Therefore, the wood generally used for making matches, packing cases, plywood, splints, tea chests, wooden crates etc. are soft wood. Rubber wood purchased by petitioner are also stated to be used for making veneers. In view of the findings, we are of the view that rubber wood, though come within the description of timber, is soft wood and the petitioner is entitled to the benefit of the Notification. The S.T.Rev. is, therefore, allowed vacating the order of the tribunal and restoring the order of the first appellate authority. However, it will be open to the Officer to consider whether purchases accounted by petitioner are of rubber wood or other soft wood and the products made are of the items referred in the Notification and grant exemption to the extent permissible under the Notification, that too for the period the Notification was in force.

C. N. RAMACHANDRAN NAIR, JUDGE

K. M. JOSEPH, JUDGE

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